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A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2646 of 1999

APPELLANTS: (In Jail) — Sampat Singh & others

- Versus -

RESPONDENT: — State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

Sd/-
DHIRENDRA MISHRA
Judge

POST FOR JUDGMENT ON 20th JULY, 2007

Sd/-
19th.7.2007

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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.2646 of 1999

APPELLANTS:
(In Jail)

1. Sampat Singh, S/o Pooran Singh, aged about 45 years,
2. Jel Singh @ Jal Singh, S/o Purushottam Singh, aged about 37 years,
3. Niranjan, S/o Purushottam, aged 47 years,
4. Naval Singh, S/o Purushottam, aged 28 years,
5. Chatur Singh, S/o Purushottam, aged 27 years,
6. Tulsi Bai, W/o Naval Singh, aged 27 years,
7. Padam Singh, S/o Pursati, aged 50 years,
8. Satbati, S/o Sampat Singh, aged 20 years,
9. Vandana @ Madna Bai, W/o Chatur Singh, aged about 25 years,
10. Peeli Bai, W/o Niranjan, aged 42 years,
11. Upendra Singh, S/o Niranjan Singh, aged 18 years,
12. Pooran Singh, S/o Motiram, aged 70 years,
13. Kameshwar Singh, S/o Sampat Singh, aged about 18 years,
14. Ugresh Singh, S/o Niranjan Singh, aged about 18 years,
15. Devendra Singh, S/o Dharam Singh, aged 18 years,

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16. Balmati @ Timay, W/o Jel Singh, aged 35 years,

17. Champa Bai, W/o Pooran Singh, aged about 52 years,

18. Janki, D/o Sampat Singh, aged about 18 years.

19. Domeshwari, D/o Jel Singh, aged about 20 years,

All residents of Village Sonabal, P.S. Kondagaon, District Bastar, M.P. (now Chhattisgarh)

- Versus -

RESPONDENT: State of Madhya Pradesh (now Chhattisgarh)

(Criminal Appeal under Section 374 (2) of the Criminal Procedure Code)

Present:
Shri R.P. Tripathi, Advocate: For the appellants.
Shri U.N.S. Deo, Addl. Public Prosecutor: For the State/respondent.

CORAM: - HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI DHIRENDRA MISHRA, JJ.

JUDGMENT

(Delivered on 24th July, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.*** -

1. These 19 accused/appellants faced trial before the Court of 3rd Additional Sessions Judge, Bastar at Jagdalpur, S.T. No.64/98, for commission of offence punishable under Sections 148, 302 read with Section 149 & 307 read with Section 149 of the IPC for committing riot with deadly weapons, causing death of Smt. Gajmati, Smt. Lakhmi & Ms. Daimati and attempting to cause death of Phooldeyi. Learned Additional Sessions Judge after conclusion of the trial convicted all the 19 accused/appellants vide judgment dated 7-9-99 for the aforesaid offences and sentenced each of the accused/appellants to undergo R.I. for 3 years & to pay a fine

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of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year under Section 148 of the IPC, to undergo imprisonment for life & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year under Section 302 read with Section 149 of the IPC and to undergo R.I. for 10 years & to pay a fine of Rs.5,000/-, in default of payment of fine to further undergo R.I. for one year under Section 307 read with Section 149 of the I.P.C.

2. By this appeal, accused/appellants have questioned legality and correctness of their conviction and sentences imposed upon them.

3. The prosecution case, in brief, is that Loodari Bai (PW-3) lodged a report on 19-11-97 at 7.15 p.m. in the evening in the Police Station Kondagaon to the effect that she is residing along with her husband and family members in village Sonabal. Today, after taking lunch her mother-in-law, sister-in-law Lakhmi, Phooldeyi and Gajmati had gone to Bhurkawahi agricultural field Khar. They were digging in their 2½ acres land. At about 4 p.m. accused Sampat, who is brother-in-law (Jeth) of Loodari (PW-3) and other accused persons with a common object came crying carrying axe, knife, one Kodki in their hands. Kame was carrying axe and in one hand he was carrying knife. Accused Ugresh, Upendra, Deva & Sampat were carrying axe. Accused Sampat was also carrying one wood in his hand. Accused Pooran was carrying Kodki. Accused Ranjan, Jalo, Naval and Chatur were empty hand. Accused Kame attacked her mother-in-law Daimati with axe on her neck. Accused Ugresh attacked Gajmati with axe on her neck. Accused Sampat assaulted Lakhmi. Accused Pooran assaulted Phooldeyi on her head and neck. Accused Ranjan, Deva and Naval were catching them. Accused Upendra and Chatur ran after her to catch her, somehow she was able to escape and entered the house of Jhitku Muriya. Attack was witnessed by Indro Kalar and Jaisingh Muriya, thereafter the accused persons left. She saw that Lakhmi, Gajmati & Daimati had succumbed to the

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injuries. Phooldeyi was lying in injured condition. She was writhing in pain. Husband of the applicant and villagers had taken Phooldeyi to the hospital. The accused persons have attacked ladies on account of land dispute.

4. Receiving this report, Station House Officer, Police Station registered offence under Sections 147, 148, 307 and 302/149 of the IPC under Ex.-P/21. The IO left for scene of occurrence and prepared inquest Ex.-P/22 on the body of Daimati, Ex.-P/23 on the body of Lakhmi and Ex.-P/24 on the body of Gajmati. The body of Gajmati was sent for postmortem examination to the Primary Health Centre, Kondagaon under Ex.-P/3 where Dr. Anita Agrawal & Dr. Rajendra Singh Doonger conducted postmortem, prepared postmortem report Ex.-P/4. They opined that cause of death was neurogenic shock (brain death) due to injuries of spinal cord at C-6 and C-7 level. Death was homicidal in nature. Doctors noticed one incised wound over neck on the right side in the size of 8 cm x 4 cm x 10 cm and multiple abrasions all around the body. Dr. Doonger prepared injury report Ex.-P/2 also. The body of Lakhmi was sent for postmortem examination to the Primary Health Centre, Kondagaon under Ex.-P/7 where Dr. Anita Agrawal and Dr. Rajendra Singh Doonger conducted the postmortem. They prepared postmortem report Ex.-P/8. They opined that cause of death was shock due to excessive haemorrhage because of cutting of blood vessels of right side of neck and cutting of trachea and oesophagus. Death was homicidal in nature. The body of Daimati was also sent for postmortem examination to the Primary Health Centre, Kondagaon under Ex.-P/11 where Dr. Anita Agrawal and Dr. Rajendra Singh Doonger conducted the postmortem. They opined that cause of death was shock due to excessive haemorrhage because of rupture of all the major blood vessels of neck and due to cut through trachea. Death was homicidal in nature. Dr. Doonger while examining injuries found 3 incised wounds on the neck and scapular region. Injuries of Phooldeyi were examined by Dr. S.K. Kanwar (PW-8). He prepared injury report Ex.-P/40. He noticed as many as 7

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injuries; 4 incised wounds over neck, left temporal region, right side of face and parietal region. Mandible and parietal bones were fractured. Movement of neck was restricted. There was swelling on the neck. He opined that all the injuries were caused by sharp edged weapon. Injury No.2 was simple in nature. He advised for X-ray and stated that injuries were grievous in nature and dangerous to life.

5. Merg intimations Ex.-P/42 with regard to death of Daimati, Ex.-P/43 with regard to death of Lakhmi, Ex.-P/44 with regard to death of Gajmati were given by the Investigating Officer. During the course of investigation, accused Ugresh gave memorandum Ex.-P/25 regarding the place where he kept axe & his clothes, in pursuance of that he got recovered axe and his clothes under Ex.-P/31. Accused Kame gave memorandum Ex.-P/26, in pursuance of that he got recovered axe and his clothes under Ex.-P/32. Accused Sampat gave memorandum Ex.-P/27, in pursuance of that he got recovered axe and one lathi under Ex.-P/33. Accused Pooran gave memorandum Ex.-P/28, in pursuance of that he got recovered axe under Ex.-P/34. Accused Devendra gave memorandum Ex.-P/29 regarding axe, in pursuance of that he got recovered axe under Ex.-P/36. Accused Upendra gave memorandum Ex.-P/30, in pursuance of that he got recovered axe under Ex.-P/35.

6. From the place of occurrence 2 spades, 2 iron pots which were used for carrying sand, 2 clothes and 2 broken pieces of red colour bangles, plain soil and blood stained soil were seized. Seized articles were sent for chemical examination under Ex.-P/26 to the Forensic Science Laboratory, Raipur.

7. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate, 1st Class, Kondagaon, who in turn committed the case to the Sessions Judge, Jagdalpur from where learned Additional Sessions Judge received the case on transfer for trial.

8. The prosecution in order to establish the charge against the accused persons examined 14 witnesses. Statements of the

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accused persons were recorded under Section 313 Cr.P.C. in which they denied material appearing against them in the prosecution evidence.

9. After hearing learned counsel for the respective parties, learned Additional Sessions Judge convicted and sentenced the accused persons as aforementioned.

10. We have heard Shri R.P. Tripathi, learned counsel for the appellants and Shri U.N.S. Deo, learned Addl. Public Prosecutor on behalf of the State/respondent.

11. Learned counsel for the accused/appellants has not disputed homicidal death of Gajmati, Lakhmi and Daimati. Moreover, eyewitnesses PW-2 Phooldeyi and PW-3 Loodari Bai have stated that the accused persons attacked Gajmati, Lakhmi and Daimati with axe and other weapons, as a result of which they succumbed to the injuries on the spot. Their evidence is corroborated by medical evidence of Dr. Rajendra Singh Doonger (PW-1), who has stated that he conducted postmortem on the bodies of Gajmati, Lakhmi and Daimati. Their death was homicidal in nature. Therefore, based on ocular and medical evidence, it is established that death of Gajmati, Lakhmi and Daimati was homicidal in nature.

12. As far as involvement of the accused/appellants in crime in question is concerned, Shri Tripathi argued that land in question where deceased Gajmati, Lakhmi & Daimati, injured Phooldeyi and Loodari Bai started digging land, was in possession of accused Sampat. He was cultivating the land regularly. There was paddy crop of accused Sampat which was being harvested by these accused persons. On the fateful day, they were also in the field. The complainant party trespassed the land and started digging the land. When they were asked not to trespass the land, instead of leaving the place, they attempted to attack Sampat & party there. The complainant party was aggressor. In the right of private defence Sampat and others attacked, therefore, no offence was committed by the accused/ appellants. They have wrongly been convicted. He also argued that since the accused

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persons were in their field and they were busy in harvesting and collecting the crop in their field, no unlawful assembly was formed in terms of the provisions of Section 141 of the I.P.C., as such, conviction of the accused/appellants with the aid of Section 149 of the I.P.C. is illegal. Even persons who were not carrying deadly weapons have also wrongly been convicted under Section 148 of the I.P.C.

13. He submitted that as far as accused/appellants namely, Tulsi Bai, Vandana @ Madna Bai, Peeli Bai, Balmati @ Timay, Champa Bai, Janki, Domeshwari, Satbati and Padam Singh are concerned, even their names do not find place in the FIR. In FIR itself, it has been mentioned that accused Jel Singh, Niranjan, Naval and Chatur were not having any weapon, therefore, they have wrongly been convicted. While drawing attention of the Court towards evidence of PW-2 Phooldeyi, Loodari Bai (PW-3), FIR and police case diary statement of Phooldeyi, he argued that there are material contradictions in respect of the part played by each of the accused persons. On account of these material contradictions the prosecution has not been able to establish crime against the accused persons beyond reasonable doubt. He also argued that in the present case, first information report was not sent to the concerned Magistrate promptly in terms of the provisions of Section 157 of the Cr.P.C. FIR was manipulated, as such, conviction of the accused persons is bad. He placed reliance on the judgment of the Apex Court in the matter of **State of Bihar V. Nathu Pandey and others** reported in **AIR 1970 SUPREME COURT 27**.

14. On the other hand, Shri U.N.S. Deo, Additional Public Prosecutor, supported the judgment of the trial Court.

15. Having heard learned counsel for the respective parties, we have perused record as well as judgment of the trial Court. Coming to the first point raised by learned counsel for the accused/appellants, Section 96 of the IPC envisages that "nothing is an offence which is done in the exercise of the right of private defence". Section 97 envisages that "every person

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has a right, subject to the restrictions contained in section 99, to defend his own body and the property". Section 99 envisages that "there is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities. The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence." Section 100 provides for the right of private defence of the body which extends to causing death. In the matters where an assault, as may reasonably cause the apprehension that death or grievous hurt will otherwise be the consequence of assault. Section 102 provides that "the right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it is continues as long as such apprehension of danger to the body continues". Section 103 provides that "the right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely; theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised". Section 105 deals with a situation where the right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

16. In the matter of **Onkarnath Singh and others V. The State of U.P.** reported in **AIR 1974 SUPREME COURT 1550** the Apex Court held that:

> "A right of private defence given by the Penal Code is essentially one of defence or self protection and not a right of reprisal or punishment. It is subject to the restrictions indicated in S.99 which are as important as the

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> right itself. One of them is that the harm inflicted in self defence must be no more than is legitimately necessary for the purpose of defence. Further, the right is conterminous with the commencement and existence of a reasonable apprehension of danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real, present and imminent."

17. In the matter of **Rajesh Kumar V. Dharamvir and others** reported in **(1997) 4 Supreme Court Cases 496** the Apex Court held that:

> ".....fascicle of Sections 97 to 106 thereof lays down the extent and limitation of such right. From a plain reading of the above sections it is manifest that such a right can be exercised only to repel unlawful aggression and not to retaliate. To put it differently, the right is one of defence and not of requital or reprisal. Such being the nature of right, the High Court could not have exonerated the accused persons of the charges leveled against them by bestowing on them the right to *retaliate* and *attack* the complainant party.....the accused party came out in the lane and attacked the complainant party *after* the latter had damaged the outer door of their house is a proper one. The offence that was committed by the complainant party by causing such damage would amount to "mischief" within the meaning of Section 425 of the Indian Penal Code and, therefore, in view of Section 105 of the Indian Penal Code the accused would have been entitled to exercise their right of private defence of property so long as the complainant party continued in the commission of the mischief. In other words, after the damage was done, the accused had no right of private defence of property, which necessarily means that when they attacked the complainant party in the lane they were the aggressors."

18. In the matter of **State of M.P. Versus Ramesh** reported in **(2005) 9 Supreme Court Cases 705** the Apex Court held that:-

> "The right commences, as soon as a reasonable apprehension of danger to the body arises from an attempt, or threat, to commit the offence, although the offence may not have been committed but not until there is that reasonable

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> apprehension. The right lasts so long as the reasonable apprehension of the danger to the body continues. As soon as the cause for reasonable apprehension disappears, there can be no occasion to exercise the right of private defence."

19. In the matter of **Shajahan & Ors. V. State of Kerala & Anr.** reported in **2007 AIR SCW 2123** the Apex Court held that:

> "The right of private defence is essentially a defensive right circumscribed by the governing statute i.e. the IPC, available only when the circumstances clearly justify it. It should not be allowed to be pleaded or availed as a pretext for a vindictive, aggressive or retributive purpose of offence."

20. In the light of above legal position and law laid down by the Apex Court, if we scrutinize evidence available on record, it is admitted position that both the parties are closely related. On the fateful day at about 4 p.m. Gajmati, Lakhmi, Daimati, PW-3 Loodari Bai and PW-2 Phooldeyi went to Bhurkawahi field with spade and iron pots meant for carrying sand. PW-2 Phooldeyi has stated that when they were digging field, the accused persons came there, they encircled them and attacked. In paras-5 & 6 of cross-examination, this witness has stated that total area of the agricultural field was 5 acre, out of that 2½ acres belongs to Daimati and 2½ acres belongs to Sampat. She has further stated that she does not know that whole 5 acres land was allotted to Sampat 20-22 years back. His family members used to sow and harvest crop. They were not able to cultivate the field because Sampat and his family members used to threaten them with axe and other weapons. They went to dig sand because there was stay of the Court in their favour. As there was a passage in the boundary for flowing water and they wanted to block that passage by putting sand that is why they started digging land. They did not tell the accused persons about the stay order. PW-3 Loodari Bai in paras-5 & 6 of her cross-examination has given similar evidence. She has also admitted that Bhurkawahi land was being cultivated by accused Sampat and his family members for the last 2 years. She has further stated that their

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advocate did not provide them the copy of stay order of the Court. For the last 2 years the accused persons used to cultivate land by threatening with axe, spade and sickle. PW-4 Shivcharan has also stated that the land in question was being cultivated by Sampat. PW-13 Jaisingh and PW-14 Indro Kalar whose presence have been mentioned in the first information report Ex.-P/21, who have been declared hostile, have stated that on the fateful day Gajmati, Lakhmi, Daimati, PW-3 Loodari Bai and PW-2 Phooldeyi were digging the land in the field. Kame and Ugresh were standing in their field. They have stated that Bhurkawahi field was being cultivated by Sampat and his family members. Therefore, it is admitted position that when the complainant party went to Bhurkawahi field for digging and for repairing boundary, the accused party was in possession of the said land, harvested crop of the accused party was lying there, as per the evidence available on record, after harvesting the crop, they already took some crop from the field and some crop was lying there, admittedly, the complainant party trespassed land.

21. But, now question remains as to whether, on the given facts and circumstances, the accused party, in the first instance, were having imminent apprehension of causing death or grievous hurt by the complainant party if such right is not exercised. In the present case, victim party i.e. 5 ladies went to the said field for digging and they started digging when the accused party was also there. Learned counsel for the accused/appellants while drawing attention of the Court towards evidence of PW-13 Jaisingh and PW-14 Indro Kalar argued that PW-13 Jaisingh has stated that at that time Lakhmi was holding axe. Accused Kame came near to her and snatched axe. He attacked Gajmati, Lakhmi, Daimati, & Phooldeyi. In cross-examination, he has stated that at that time, accused Kame and Ugresh asked these ladies that they should not dig the land. Daimati & party said that the field belongs to them, therefore, they will not go. It is correct to say that at that time Kame and Ugresh were chasing Lakhmi carrying axe in their hands. Accused Kame snatched axe and

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started brandishing the same in air. PW-14 Indro Kalar has also stated that Kame and Ugresh started brandishing the axe in the air. After snatching the axe, Kame and Ugresh attacked Daimati, Gajmati and Lakhmi. Even though these two witnesses have been declared hostile but from their evidence it has been established that accused persons Kame and Ugresh snatched the axe from the complainant party. In cross-examination of PW-2 Phooldeyi and PW-3 Loodari Bai defence has not been able to elicit anything that victim ladies in any manner were attempting to attack Sampat, Kame and Ugresh or any other accused persons. On the contrary, as per the evidence of independent witnesses, even though they have been declared hostile, it has come on record that the accused persons snatched the axe from victim and thereafter, they attacked. In the first instance, accused persons being male, they were more sturdy and powerful than victim ladies. In the second place, they stanched the axe from the ladies. There is no evidence that there was any apprehension of death or grievous hurt to the accused party from the victim ladies. The only evidence is to the extent that the accused party asked them to leave the field, but the victim ladies continued to dig the land and said that they will not leave the field. Even axe and other instruments were snatched and they were attacked by the accused persons. Therefore, in fact, the accused party was aggressor and they attacked the deceased persons mercilessly without any danger to their life. Merely because the ladies trespassed the field of the accused persons, simply the act of the complainant party that they were not leaving the field even after asking by the accused persons, cannot entitle the accused persons to retaliate or attack in merciless manner. In the first instance, if at all these ladies were not moving out of the field, there was enough time with the accused party to have recourse to the protection of the public authorities. As per the provisions of Section 99 of the I.P.C. they had no right of private defence to assault the ladies with deadly weapons and cause death of 3 ladies namely, Gajmati, Lakhmi and Daimati and attempting to cause death of Phooldeyi by

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causing grievous injuries to her with deadly weapons. At the most being sturdy and powerful men they could have pushed them out of the field, but they had no right to attack the deceased ladies with deadly weapons. Certainly, in fact, there was no apprehension of death or grievous hurt to the body or damage to the property. As per the provisions of Section 99 of the I.P.C. the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Therefore, for the foregoing reasons, we do not find any substance in the argument of learned counsel for the appellants that accused persons acted in their right of private defence. On the given facts and circumstances of the case, the act of accused persons was not covered under any of the Sections 97 to 105. It cannot be held that their act was under the right of private defence.

22. Now, coming to the second argument advanced by learned counsel for the accused/appellants regarding unlawful assembly, it is admitted position that the field where quarrel started was in possession of accused Sampat, even harvested crop of Sampat was lying on the field which has been admitted by the prosecution witnesses. It has come in the evidence that few of the accused persons were already working in their field, at that time, victim party came and started digging the field, then the accused party asked them to leave the field, therefore, there is no question of forming unlawful assembly by the accused persons as per the provisions of Section 141 I.P.C. In order to attract the provisions of Section 149 IPC, essential prerequisite was that assembly was unlawful as per the provisions of Section 141 of the I.P.C. as the accused persons were standing in the field, which was in their possession. There was no common object of the accused persons to attack the deceased persons. In fact, the accused persons asked the victims to leave the field, when they did not leave the field, they were attacked by few accused persons without any common object of all accused persons, because on the spur of moment individual accused attacked without any common object, therefore, only those accused persons who attacked are

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responsible for their own act. As per the FIR Ex.-P/21, out of 10 accused, only 5 accused attacked on the spur of the moment. Even the names of nine accused persons do not find place in the FIR regarding their presence on the spot. In order to attract the provisions of Section 149 IPC and fastening constructive liability on the members of the assembly, it is to be seen whether the assembly consisted of five or more persons and whether the said persons entertained one or more of the common objects, as specified in Section 141. The only requirement is that member should have understood that the assembly was unlawful and was likely to commit any of the acts which fall within the purview of Section 141. The word "object" means the purpose or design and, in order to make it "common", it must be shared by all. In other words, the object should be common to the persons, who compose the assembly, that is to say, they should all be aware of it and concur with it. A common object may be formed by express agreement after mutual consultation, but that is by no means necessary. It may be formed at any stage by all or a few members of the assembly and the other members may just join and adopt it. Once formed, it need not continue to be the same. It may be modified or altered or abandoned at any stage. The expression "in prosecution of common object" as appearing in Section 149 has to be strictly construed as equivalent to "in order to attain the common object." It must be immediately connected with the common object by virtue of the nature of the object. There must be community of object and the object may exist only up to a particular stage, and not thereafter. Members of an unlawful assembly may have community of object up to a certain point beyond which they may differ in their objects and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of Section 149 IPC may be different on different members of the same assembly. Mere presence in an unlawful assembly cannot

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render a person liable unless there was a common object and he was actuated by that common object and that object is one of those set out in Section 141. Where common object of an unlawful assembly is not proved, the accused persons cannot be convicted with the help of Section 149. The above principle has been laid down by the Apex Court in the matter of **Bikau Pandey and others V. State of Bihar** reported in **(2003) 12 Supreme Court Cases 616**.

23. In the matter of **State of Bihar** (Supra), the Apex Court held that in order to attract the provisions of Section 149 the prosecution must establish that there was unlawful assembly and that the crime was committed in prosecution of the common object of the assembly. **Assembly whose common object is to defend property by use of force within limits prescribed by law cannot be designated as unlawful assembly.** Assembly with common object of preventing theft of their property exercising right of private defence, some exceeding right of private defence and causing death but who exceeded right not known, no one could be held guilty either under S.302 or under Section 302/149 or under S.302/34. Facts of that case were that one C who was in possession of a plot and mahua tree standing thereon went to the plot along with his party with the object of preventing the commission of theft of the mahua fruits by the prosecution party in exercise of their right of private defence of property. In the altercation that followed, two persons from prosecution party received fatal bhala injuries resulting in their death. Some of the accused party were armed with bhalas but it was not possible to say who were so armed and which of them inflicted the fatal wounds on the deceased. It was found that persons who caused the two deaths exceeded the right of private defence as they inflicted more harm than was necessary for the purpose of defence. The Court held that none of the accused could be convicted under S.302/149 or 34 IPC. The object of the assembly was not unlawful. There was no common object or common intention to kill the two deceased persons. The murders were not committed in prosecution of the common

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object of the assembly or were not such as the members of the assembly knew to be likely to be committed.

24. In the present case also if we apply above legal position, the field where the complainant party went and started digging was in possession of the accused party. Few of them were already working in their field, at that time, the complainant party came and started digging at 4 p.m. Accused Kame and Ugresh went near them, they asked them not to indulge in digging of the field, but they did not accede the request made by the accused party, thereafter few accused persons snatched the axe and attacked those ladies on the spur of moment. Even though, no such right of private defence was available to the accused persons who caused death by attacking with axe, as there was no apprehension of death or grievous hurt to those persons, but certainly there was no common object or common intention of the accused persons to attack and cause death of the ladies, even knowledge cannot be attributed to any person or the accused party who did not participate in the attack that they were knowing that their family members were going to attack the ladies to the extent of causing their death. Therefore, none of the accused persons can be convicted with the aid of Section 149 or 34 of the I.P.C. However, the persons who in fact attacked and caused death of the deceased persons and attempted to cause death of Phooldeyi are individually responsible for their act, as no right of private defence to that extent was available to them.

Tulsi Bai, Satbati, Vandana @ Madna Bai, Peeli Bai, Balmati @ Timay, Champa Bai, Janki, Domeshwari and Padam Singh

25. As far as these accused/appellants are concerned, their names do not find place in the first information report even about their presence on the place of occurrence. Moreover, there is no evidence that in any manner they attacked or facilitated the attack or actively participated in the attack, therefore, conviction and sentences imposed upon them under Sections

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302 read with Section 149, 307 read with Section 149 & 148 of the I.P.C. cannot be sustained.

Jel Singh, Niranjan, Naval and Chatur

26. As far as these accused persons are concerned, in the first information report Ex.-P/21 it has been mentioned that these accused persons were empty handed and there is no allegation that they in any manner attacked the deceased persons, even though it has been mentioned that Chatur, Naval and Ranjan chased them, but none of them inflicted any injury, as such they were not involved in the attack, therefore, their conviction under Sections 302 read with Section 149, 307 read with Section 149 & 148 of the I.P.C. cannot be sustained.

Kame, Ugresh, Sampat, Upendra, Devendra

27. As far as involvement of these accused persons is concerned, in the first information report Ex.-P/21, it has been mentioned that Kame attacked Daimati with axe on her head, Ugresh attacked Gajmati on her neck, Sampat attacked Lakhmi and Pooran attacked Phooldeyi. PW-2 Phooldeyi has stated that Kame, Sampat and Upendra attacked Lakhmi with axe. Accused Ugresh and Devendra attacked Gajmati with axe. Accused Sampat attacked Lakhmi with axe. Accused Upendra also attacked Lakhmi with axe. Accused Pooran attacked Daimati. Accused Kame also attacked Daimati. PW-3 Loodari Bai has stated that accused Kame attacked Daimati. Accused Ugresh and Devendra attacked Gajmati. Accused Sampat attacked Lakhmi. Accused Pooran attacked Phooldeyi. Even though PW-13 Jaisingh and PW-14 Indro Kalar have been declared hostile but as per the settled law whole evidence of a hostile witness cannot be rejected and relevant portion can be used. PW-13 Jaisingh has categorically stated that the complainant party came and they started digging the field. Accused Kame and Ugresh were in the field, they went near the complainant party. Accused Kame snatched the axe from Lakhmi and he attacked Phooldeyi, Gajmati, Daimati and Lakhmi. In cross-examination by learned counsel for the accused, he has stated that Kame and Ugresh were chasing

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Lakhmi. PW-14 Indro Kalar has stated that accused Kame and Ugresh attacked the deceased persons. He himself saw them.

28. Learned counsel for the accused/appellants argued that there are contradictions between 161 statement, first information report and Court evidence of PW-2 Phooldeyi. Therefore, her evidence cannot be believed. Similarly, there is contradiction between evidence of PW-3 Loodari Bai and PW-2 Phooldeyi.

29. The Hon'ble Apex Court in the matter of **Leela Ram (Dead) through Duli Chand V. State of Haryana and another** reported in **(1999) 9 SCC 525** held that:-

> ".....the discrepancies found in the ocular account of the witnesses unless they are so vital, cannot affect the credibility of the evidence of the witnesses. There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence."

30. In the matter of **State of U.P. V. M.K. Anthony** reported in **(1985) 1 SCC 505,** in para-10, the Apex Court observed that:-

> "While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating

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officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals."

31. In the matter of **Rammi V. State of M.P.** reported in **(1999) 8 SCC 649**, in para-24, the Apex Court observed that:-

> "When an eyewitness is examined at length it is quite possible for him to make some discrepancies. No true witness can possibly escape from making some discrepant details. Perhaps an untrue witness who is well tutored can successfully make his testimony totally non-discrepant. But courts should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that the court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny."

32. In paras-25 to 27 it was observed that:-

> "25. It is a common practice in trial courts to make out contradictions from the previous statement of a witness for confronting him during cross-examination. Merely because there is inconsistency in evidence it is not sufficient to impair the credit of the witness.
>
> 26. A former statement though seemingly inconsistent with the evidence need not necessarily be sufficient to amount to contradiction. Only such of the inconsistent statement which is liable to be 'contradicted' would affect the credit of the witness. Section 145 of the Evidence Act also enables the cross-examiner to use any former statement of the witness, but it cautions that if it is intended to 'contradict' the witness the cross-examiner is enjoined to comply with the formality prescribed therein. Section 162 of Code also permits the cross-examiner to use the previous statement of the witness (recorded under Section 161 of the Code) for the only limited purpose i.e. to 'contradict' the witness.
>
> 27. To contradict a witness, therefore, must be to discredit the particular version of the witness. Unless the former statement has the potency to discredit the present statement, even

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> if the latter is at variance with the former to some extent it would not be helpful to contradict that witness (vide **Tahsildar Singh vs. State of U.P.** reported in **AIR 1959 SC 1012**)."

33. In the light of the above legal position, if we examine evidence in the light of argument advanced by learned counsel for the accused/ appellants, in the first information report Ex.-P/21 lodged by PW-3 Loodari Bai, it has been mentioned that accused Kame, Ugresh, Upendra, Deva and Sampat were carrying axe. Accused Pooran was carrying Kodki i.e. spade. Kame attacked Daimati with axe on her neck. Ugresh attacked Gajmati with axe on her neck. Sampat attacked Lakhmi with axe. Pooran attacked Phooldeyi on her head and neck. PW-3 Loodari Bai in her Court evidence has categorically stated that Kame attacked Daimati on her neck. Ugresh and Devendra attacked Gajmati. Sampat attacked Lakhmi. Pooran attacked Phooldeyi on her neck. PW-2 Phooldeyi, injured witness, in para-2 of her evidence has stated that Kame, Sampat and Upendra attacked Lakhmi with axe on her head and neck. Ugresh and Devendra attacked Gajmati with axe. Devendra attacked her on her neck. Sampat attacked Lakhmi. Upendra attacked Lakhmi. Pooran attacked Daimati. Accused Kame also attacked Daimati with axe. In her statement (Ex.-D/1) recorded under Section 161 Cr.P.C., she has stated that Sampat attacked Lakhmi. Ugresh and Devendra attacked Gajmati. Kame and Ugresh attacked Daimati with axe. Pooran attacked Daimati on her head.

34. Perusal of the first information report, evidence of PW-3 Loodari Bai, PW-2 Phooldeyi and her statement (Ex.-D/1) recorded under Section 161 Cr.P.C. shows that there are minor discrepancies. As per the injury report, there was only one incised wound on the body of Lakhmi whereas PW-2 Phooldeyi in her Court evidence has stated that Kame, Sampat and Upendra, all the three, attacked on her neck and head. But attack made by Sampat is consistent. As far as attack made by Sampat is concerned, in statement of PW-2 Phooldeyi under Section 161 Cr.P.C., his name has been mentioned apart from Court evidence. As far as attack made by Upendra

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is concerned, same has not been mentioned in the statement under Section 161 Cr.P.C. nor this fact has been corroborated by PW-3 Loodari Bai, as well as in FIR also it has not been mentioned that he attacked. Except Court evidence of PW-2, there is no other evidence regarding assault made by Upendra. Moreover, there was only one injury on the neck of Lakhmi, therefore, participation of Upendra in attacking Lakhmi is doubtful. Apart from incised wound, there are abrasions also. It is just possible that axe of other accused Devendra landed on the same place. Moreover, with the passage of time such contradictions are bound to occur because evidence of these witnesses was recorded just after one year. Similarly, PW-2 Phooldeyi has stated that Ugresh and Devendra attacked Gajmati with axe. As far as Ugresh is concerned, it is consistent in FIR, in the evidence of PW-2 Phooldeyi and in her statement under Section 161 Cr.P.C. and in the evidence of PW-3 Loodari Bai that he assaulted Gajmati. There was incised wound on the body of Gajmati. PW-2 Phooldeyi has stated that Pooran and Kame attacked Daimati. As per the injury report of Daimati, there were 3 incised wounds on her neck & shoulder, therefore, possibility of attacking by two cannot be ruled out. As far as accused Kame is concerned, it is consistent in the first information report, evidence of PW-2 Phooldeyi and PW-3 Loodari Bai that he assaulted Daimati. Therefore, there is no material contradiction in their evidence except regarding participation of Upendra in assaulting Lakhmi. Such contradictions and discrepancies are bound to occur with the lapse of time because number of accused persons attacked. The names of all the above five accused persons with weapons have been categorically mentioned in the first information report Ex.P/21 which was lodged with all promptness within a period of 2 hours 15 minutes and distance of the police station from the place of occurrence is 18 km. Involvement of these five accused persons further strengthen from the fact that based on the information Ex.P/25 given by Ugresh, axe, weapon of offence, was seized under Ex.P/31. At the instance of Kame as per information

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Ex.-P/26, axe was recovered under Ex.-P/32. As per information Ex.-P/27 given by Sampat, axe was recovered under Ex.-P/33. As per information Ex.-P/28 given by Pooran, axe was recovered under Ex.-P/34. As per information Ex.-P/29 given by Devendra, axe was recovered under Ex.-P/36. Memorandums and recoveries have been proved as per the evidence of PW-7 Pooran Singh who has stated that memorandums Ex.-P/25 to Ex.-P/29 were given by the above accused persons, same were seized under Exs.-P/31 to P/34 & P/36 and same bears his signatures. Investigating Officer PW-12 N.S. Negi has stated that Sampat gave information Ex.-P/27, spade was recovered under Ex.-P/33 at his instance. Pooran gave information Ex.-P/28, in pursuance of that axe was recovered under Ex.-P/34. Devendra gave information Ex.-P/29. Axe was seized from Ugresh under Ex.-P/31. Axe was recovered at the instance of Kame under Ex.-P/32. PW-11 A. Nuruti, sub inspector, has stated that accused Devendra gave memorandum Ex.-P/29, in pursuance of that axe was recovered under Ex.-P/36. Therefore, weapons of offence were also recovered from the accused persons and that corroborates involvement of the accused persons in the crime in question. Hence, offence against accused Kame & Sampat for attacking Lakhmi, thereby causing her death, similarly offence against Ugresh and Devendra for attacking Gajmati, thereby causing her death, offence against Kame for attacking Daimati, thereby causing her death are established. Accused Pooran attempted to cause death of Phooldeyi. As per the evidence of Dr. Kanwar (PW-8) who examined injuries of Phooldeyi on 19-11-97, there were 7 injuries on her body, out of those injuries, for injury Nos. 5, 6 & 7 he advised for X-ray and his report Ex.-P/40. Injuries were dangerous to life. This witness has not been cross-examined. These injuries were caused by Pooran with axe.

35. For the foregoing reasons, offence against accused Kame & Sampat for committing murder of Lakhmi; Ugresh & Devendra for committing murder of Gajmati and Kame for committing the murder of Daimati is proved beyond reasonable doubt.

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Even though they have been convicted and sentenced under Section 302 read with Section 149 of the I.P.C., since, as per the above discussion, they themselves attacked and committed murders of Gajmati, Lakhmi and Daimati, evidence to that effect is also on record and learned counsel for the accused persons cross-examined these witnesses at length, therefore, each of the accused/appellants can safely be convicted and sentenced under Section 302 of the I.P.C. independently for committing the murders of Gajmati, Lakhmi and Daimati. Since accused Pooran already expired, his appeal has been abated, therefore, attack made by him on Phooldeyi becomes meaningless.

36. As far as arguments of learned counsel for the accused/ appellants that first information report was not sent to the concerned Magistrate promptly in terms of the provisions of Section 157 of the Cr.P.C., FIR was manipulated is concerned, Section 157 of the Cr.P.C. envisages that an officer-in-charge of a police station shall forthwith send a report to the concerned Magistrate empowered to take cognizance of such offence upon a police report.

37. The Apex Court in the matter of **State of Punjab V. Phola Singh and others** reported in **(2003) 11 SCC 58** in para-13 held that:-

> **"**....the High Court came to conclude on surmises and conjectures that the FIR was lodged after deliberation. There was no material to support such a conclusion. The distance between the police post and the Ilaqa Magistrate is about 20 km. The special report reached the Magistrate within a few hours. That by itself is not a suspicious circumstance. The High Court has not considered that the distance is 20 km. Additionally, no question was put to the investigating officer as to why it took three hours for the report to reach the Magistrate. Had such a question been put, the investigating officer would have been in a position to explain the delay, if any. Without seeking for a response from the investigating officer, it is not open to say that there was delay in sending the report. Otherwise, an adverse inference would be drawn in respect of a matter for which no explanation is sought for from the relevant witnesses. It is not the time, but unexplained delay in a case,

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> which is of relevance. The inevitable conclusion therefore is that the High Court was wrong in holding that there was delay in lodging the FIR and in sending the special report."

38. In the matter of **Alla China Apparao and others Vs. State of A.P.** reported in **(2002) 8 SCC 440** the Apex Court held that:

> "the delay in sending the FIR to the Magistrate forthwith, it cannot be taken, *ipso facto*, to be a ground for throwing out the prosecution case if the same is otherwise trustworthy upon appreciation of evidence which is found to be credible. However, if it is otherwise, an adverse inference may be drawn against the prosecution and the same affect the veracity of the prosecution case, more so when there are circumstances from which an inference can be drawn that there were chances of manipulation in the first information report by falsely roping in the accused persons after due deliberations."

39. In the present case, learned counsel for the accused persons had not cross-examined investigating officer regarding delay in sending FIR to the concerned Magistrate. Had he cross-examined the investigating officer or station house officer, he could have explained the delay. In the second place, no such argument was raised before the trial court that FIR was not sent in time to the concerned Magistrate. For the first time learned counsel for the accused/appellants has raised this objection before this Court. In view of the above, since investigating officer or station house officer was not asked any question to explain the delay, if any, in the circumstances, we are of the considered opinion that learned counsel for the accused/appellants cannot be permitted to raise this objection at this stage that too without giving sufficient opportunity to explain the delay, if any, in sending the FIR. Moreover, perusal of the record shows that crime was committed at 4 p.m. and report was lodged at 19.15 hours i.e. 7.15 p.m. in the police station Kondagaon which is at a distance of 18 km from the place of occurrence. Every detail has been recorded in the FIR. It cannot be said that FIR was lodged with a delay. Moreover, it has come in the evidence of injured witness PW-2 Phooldeyi was taken to the hospital at Kondagaon immediately after the incident and FIR was lodged, therefore, in all

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probability, when the complainant party took injured to Kondagaon and report was lodged with all promptness in the police station at 7.15 p.m., even PW-3 Loodari Bai has not been cross-examined on the aspect that FIR was lodged with a delay for manipulation against the accused persons. From evidence of PW-2 Phooldeyi, injured witness, PW-3 Loodari Bai who was present at the scene of occurrence, PW-13 Jaisingh and PW-14 Indro Kalar, independent witnesses, involvement of the accused persons in the crime in question is established. The defence has not been able to bring on record in cross-examination any point, which probabilise false implication of the accused persons in the crime in question. Therefore, we do not find any substance in the argument of learned counsel for the accused/appellants. Since it has been held that there was no unlawful assembly, therefore, conviction of the accused persons under Section 148 of the I.P.C. cannot be sustained.

40. In the result:-

(i) Appeal of Jel Singh @ Jal Singh, Niranjan, Naval Singh, Chatur Singh, Tulsi Bai, Padam Singh, Satbati, Vandana @ Madna Bai, Peeli Bai, Upendra, Balmati @ Timay, Champa Bai, Janki and Domeshwari succeeds. They are acquitted of the charges under Section 302 read with Section 149, 307 read with Section 149 and 148 of the I.P.C. Conviction and sentence imposed upon them under these sections are set aside. Accused Jel Singh @ Jal Singh, Niranjan, Naval Singh, Chatur Singh, Tulsi Bai, Padam Singh, Satbati, Vandana @ Madna Bai, Peeli Bai, Balmati Singh @ Timay, Champa Bai, Janki and Domeshwari are on bail. Their bail bonds are discharged. They need not surrender to the bail bonds.

(ii) Accused Upendra be set at liberty forthwith, if not required in any other case.

(iii) Accused Pooran Singh died during the pendency of this appeal. As per the communication dated 17-7-2007 submitted by Additional Public Prosecutor along with

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communication dated 16-7-2007 sent by S.H.O., P.S. Kondagaon, District Bastar, Pooran had expired about a years back. No application for prosecuting this appeal has been filed by his legal heirs. Therefore, his appeal stands abated. Even otherwise, as per the communication of the Additional Public Prosecutor, Pooran was released from Central Jail, Jagdalpur on 15-12-2004 on mercy petition on the ground of remission by the Governor of State of Chhattisgarh.

(iv) Conviction of the accused/appellants namely, Kame @ Kameshwar Singh, Sampat, Ugresh and Devendra is converted into Section 302 of the I.P.C. instead of Section 302 read with Section 149 for committing the murders of Gajmati, Lakhmi and Daimati. The sentence imposed upon them i.e. imprisonment for life & fine of Rs.5,000/-, in case of default of fine amount, R.I. for one year are maintained. Their conviction under Section 148 of the I.P.C. is set aside. They are acquitted of the said charge.

(v) Conviction of accused Kame @ Kameshwar Singh is converted into Section 307 of the I.P.C. instead of Section 307 read with Section 149 of the I.P.C. for attempting to cause death of Phooldeyi. However, conviction and sentence imposed upon accused/appellants namely, Sampat, Ugresh and Devendra for commission of offence under Section 307 read with Section 149 of the I.P.C. are set aside. They are acquitted of the said charge.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve

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HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No. 96 46 / 99 सन् ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

D.B.: - Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Dhirendra Mishra, JJ.

20-7-2007:-

Shri R.P. Tripathi, counsel for the appellants.
Shri U.N.S. Deo, Additoinal Public Prosecutor for the State.
Judgment pronounced.

(i) Appeal of Jel Singh @ Jal Singh, Niranjan, Naval Singh, Chatur Singh, Tulsi Bai, Padam Singh, Satbati, Vandana @ Madna Bai, Peeli Bai, Upendra, Balmati @ Timay, Champa Bai, Janki and Domeshwari succeeds. They are acquitted of the charges under Section 302 read with Section 149, 307 read with Section 149 and 148 of the I.P.C. Conviction and sentence imposed upon them under these sections are set aside. Accused Jel Singh @ Jal Singh, Niranjan, Naval Singh, Chatur Singh, Tulsi Bai, Padam Singh, Satbati, Vandana @ Madna Bai, Peeli Bai, Balmati Singh @ Timay, Champa Bai, Janki and Domeshwari are on bail. Their bail bonds are discharged. They need not surrender to the bail bonds.

(ii) Accused Upendra be set at liberty forthwith, if not required in any other case.

(iii) Accused Pooran Singh died during the pendency of this appeal. As per the communication dated 17-7-2007 submitted by Additional Public Prosecutor along with communication dated 16-7-2007 sent by S.H.O., P.S. Kondagaon, District Bastar, Pooran had expired about a years back. No application for prosecuting this appeal has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

been filed by his legal heirs. Therefore, his appeal stands abated. Even otherwise, as per the communication of the Additional Public Prosecutor, Pooran was released from Central Jail, Jagdalpur on 15-12-2004 on mercy petition on the ground of remission by the Governor of State of Chhattisgarh.

(iv) Conviction of the accused/appellants namely, Kame @ Kameshwar Singh, Sampat, Ugresh and Devendra is converted into Section 302 of the I.P.C. instead of Section 302 read with Section 149 for committing the murders of Gajmati, Lakhmi and Daimati. The sentence imposed upon them i.e. imprisonment for life & fine of Rs.5,000/-, in case of default of fine amount, R.I. for one year are maintained. Their conviction under Section 148 of the I.P.C. is set aside. They are acquitted of the said charge.

(v) Conviction of accused Kame @ Kameshwar Singh is converted into Section 307 of the I.P.C. instead of Section 307 read with Section 149 of the I.P.C. for attempting to cause death of Phooldeyi. However, conviction and sentence imposed upon accused/appellants namely, Sampat, Ugresh and Devendra for commission of offence under Section 307 read with Section 149 of the I.P.C. are set aside. They are acquitted of the said charge.

Before parting with this judgment, we are constrained to observe that in terms of the provisions of Section 157 Cr.P.C. First Information Report are not being sent forthwith to the Judicial Magistrates empowered to take cognizance of the offence upon a police report. In this respect,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Police Officers and Judicial Officers are not strictly adhering to the provisions of Section 157 Cr.P.C. In the matter of **Mehraj Singh V. State of U.P.** reported in **1994 (5) SCC 188** the Apex Court observed that FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, the weapons, if any, used as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 CrPC, is aimed at served a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to give it colour of a promptly lodged FIR.

There is consistent view of the Apex Court and the High Courts that it is the duty of the officer-in-charge of the police station to send copy of the first information report forthwith to the concerned Magistrate. It is unfortunate that it is not being adhered by the officer-in-charge of the police station. Equally concerned Magistrates are also insensitive towards the provisions of Section 157 Cr.P.C. and they are not insisting upon the police officer to send first information report forthwith with all promptness, at the same time no full proof system has been devised by the Judiciary as to how to deal with the copy of FIR received from Police Station, that is creating lot of problems. Resultantly, due to prevailing system many a times fairness in investigation is questioned. Therefore, it is imperative that all the police officers, officer-in-charge of the police stations and concerned Judicial Magistrates adhere to the compliance of the above provisions and directions of the Apex Court and the High Courts.

On enquiry from the Registrar General, it was informed that practice which is prevailing in the State of Chhattisgarh is that copy of the FIR is sent to the concerned Magistrate and in turn same is kept in a folder by the Court staff. As and when charge sheet is filed, same is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

tagged with the concerned charge sheet. In number of cases, in the files of subordinate courts, we have observed that this statement is not found correct. Be that as it may, no correct procedure or full proof system has been devised so far to ensure that FIR is sent and received with all promptness and dealt with properly. No system has been devised which shows that when the FIR was received and was dealt with in such a manner that leaves no room for manipulation by anyone.

It is, therefore, directed that all officer-in-charge of the police station to send copy of the FIR to the concerned Magistrate forthwith with all promptness, even if the day happens to be holiday, same should be sent by special messenger to the concerned Magistrate at his residence and the concerned Magistrate on receipt of FIR, in the first instance, will make endorsement on copy of FIR, mode of receipt of FIR i.e. whether it is received by hand or by post and the time of receipt. All the Magistrates to ensure that a police station wise register called FIR register is maintained in which there are various columns to enter serial number, date and time receipt of copy of FIR, number of FIR, name of police station, name of the informant/complainant, name of the accused persons, Section & Act under which offence is committed and in last column the result of investigation as and when charge sheet is filed. Copy of the FIR must be placed on record of the charge sheet. If negative final report is filed, same must be placed in the record of such file and entries regarding result and placing of FIR should be made in the register with time and date with initials of the concerned Judicial Magistrate.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —C—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Registrar General of this Court is directed to send copy of this order to all the District Judges, Judicial Officers, Director General of Police and all the Superintendents of Police to ensure compliance of the same. All concerned are directed to report compliance of the above order within a period of 2 months from today. All the Superintendents of Police and District Judges to report to this Court that all the police stations and every Magistrate have been informed about the above order and that they are complying with this order and that Magistrates have opened FIR register.

Registrar General is directed to place the matter before Hon'ble the Acting Chief Justice for obtaining appropriate orders on administrative side.

List the matter for compliance on 24th September, 2007.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve